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Attorney Docket No.: 8100.1002 US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	
	:	Examiner: Kevin Thao Truong
STEPHEN J. VAN LUE	)	
	:	TC Art Unit: 3734
Appln. No.: 10/578,804	)	
	:	
Filed: May 9, 2006	)	
	:	
For: MAGNETIC DEVICES AND	)	
APPARATUS FOR MEDICAL/	:	
SURGICAL PROCEDURES AND	)	
METHODS FOR USING SAME	:	Date: July 14, 2010

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

COMMENTS ON EXAMINER'S STATEMENT OF REASONS FOR ALLOWANCE

Sir:

The applicant would like to clarify that the prior art of record fails to disclose or suggest salient features of claim 12, which is not addressed in the examiner's statement of reasons for allowance. For example, the prior art of record does not disclose or suggest a trocar assembly having at least one of a cap valve member including a compliant toroidal body disposed in a trocar cap and a trocar valve member including a compliant toroidal body disposed in a trocar base, wherein the toroidal body has a central opening and is disposed for compression axially when the cap is magnetically secured to the base thereby closing the central opening when a surgical instrument is not present.

Finally, the applicant would like to confirm that certain comments made during prosecution had no influence on the examiner's decision to allow claims 14 and 36. One is

the comment in the Amendment After Final Rejection of April 13, 2010, that stated, "These claims are directed to a trocar without a trocar cap." Obviously, the applicant did not mean to say that the claims do not cover the recited trocar when used with a trocar cap. The point was simply that these claims do not recite a trocar cap, like claims 1 and 12 discussed before them. The applicant assumes that the examiner interpreted the comment in that context.

Second, the applicant also wishes to confirm that the following comments regarding the Lerman and Uecker references did not influence the examiner's decision to allow claims 14 and 36:

Nor is there any teaching in either Lerman or Uecker regarding creating a magnetic field axially aligned with a "lumen" through Lerman's continent ileostomy or colostomy or through Uecker's upper block, lower block, and retaining nut. As for Lerman, there is no discussion regarding choosing the strengths and placements of the discrete magnets to create a magnetic field axially aligned with the passageway 14 through the insert 40. In Uecker, the drawings show the annular magnet 38 and the probe 40 (see Fig. 2) slightly offset radially from the axis of the neck of the upper block.

Amendment After Final Rejection, April 13, 2010, at page 13.

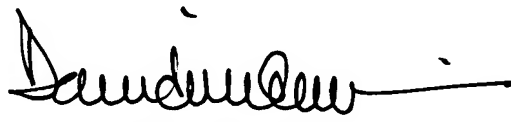
Here, the applicant was making the point that because neither Lerman nor Uecker are concerned with a surgical trocar with the applicant's unique claimed structure that will guide a surgical instrument into the trocar lumen, neither reference would have suggested a trocar with claim 14's "magnet in said base comprising an annular disc disposed at said proximal end of said base surrounding said lumen creating a magnetic field generally axially aligned with said lumen and having a predetermined strength for holding a distal end of an elongated surgical instrument in place in alignment with said lumen," or claim 36's "magnet in said base including an annular member surrounding said lumen creating a magnetic field generally axially aligned with said lumen and having a predetermined

strength for holding a distal end of an elongated surgical instrument in place in alignment with said lumen." The applicant did not mean to say that the phrase "generally axially aligned" in the claims requires that the recited magnetic field and trocar lumen be coaxial (or that the funnel-shaped opening be coaxial with either the lumen or the magnetic field). The claims are not intended to and do not require any such configuration.

The examiner's statement of reasons for allowance does not indicate that he interpreted claims 14 and 36 other than as so intended, or that these claims were allowed based on the applicant's above noted comments from the Amendment After Final Rejection dated April 13, 2010. However, if the examiner interpreted the phrase "generally axially aligned" to mean that the recited features must be co-axial (that is, have the same axis), he is requested to withdraw the allowance of the present application to enable clarification of the scope of allowed claims 14 and 36.

Any fee associated with this paper should be charged to Deposit Account No. 50-0409.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David M. Quinlan", with a long horizontal flourish extending to the right.

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